

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

BNP PARIBAS S.A., BNP PARIBAS
ARBITRAGE SNC, BNP PARIBAS BANK &
TRUST (CAYMAN) LIMITED, and BNP
PARIBAS SECURITIES SERVICES S.A.,

Defendants.

Adv. Pro. No. 12-01576 (SMB)

DISCOVERY STAY STIPULATION AND ORDER

Plaintiff Irving H. Picard (the “Trustee”), as trustee of the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.*, and the chapter 7 estate of Bernard L. Madoff, and BNP Paribas S.A., BNP Paribas Arbitrage SNC, BNP Paribas Bank & Trust (Cayman) Limited, and BNP Paribas Securities Services S.A., (together, the “BNPP Defendants”

and, together with the Trustee, the “Parties”), by and through their respective undersigned counsel, state as follows:

WHEREAS, on May 4, 2012, the Trustee commenced adversary proceeding no. 12-01576 (SMB) (the “Action”) against the BNPP Defendants to recover subsequent transfers allegedly received from Rye Select Broad Market Portfolio Limited, Rye Select Broad Market XL Fund, L.P., and Rye Select Broad Market XL Portfolio Limited (collectively, the “Tremont Funds”), Kingate Global Fund Ltd., Kingate Euro Fund Ltd., and Fairfield Sentry Limited;

WHEREAS, on August 30, 2017, the Trustee filed an Amended Complaint in the Action (the “AC”) to recover transfers from the Tremont Funds and Rye Select Broad Market Fund, L.P., Adv. Pro. No. 12-01576 (SMB), ECF Doc. No. 100;

WHEREAS, on October 3, 2018, the Bankruptcy Court issued a decision holding that, *inter alia*, it would treat the matter before it as a motion by the Trustee for leave to amend his existing complaint (the “Motion to Amend”) in this adversary proceeding, Adv. Pro. No. 12-01576 (SMB), ECF Doc No. 148;

WHEREAS, on October 18, 2018, the Bankruptcy Court entered an order granting the Motion to Amend, provided that the AC’s claims are limited to certain transfers from the Tremont Funds identified in Exhibit A to that order and provided further that the only issue regarding each transfer is whether the Defendants gave value for the transfer, Adv. Pro. No. 12-01576 (SMB), ECF Doc. No. 150;

WHEREAS, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, Case No. 17-2992, 917 F.3d 85 (2d Cir. 2019), ECF No. 1311 (the “ET and Comity Decision”) which, *inter alia*, vacated a prior opinion of the Bankruptcy Court with respect to the extraterritorial application of certain provisions of the Bankruptcy Code and the

application of international comity principles to certain of the Trustee's clawback claims (the "ET and Comity Issues");

WHEREAS, on April 23, 2019, the Second Circuit stayed issuance of the mandate in respect of the ET and Comity Decision pending the disposition of a Petition for Writ of Certiorari in the Supreme Court on its decision, No. 17-2992(L), ECF Doc. No. 1503;

WHEREAS, on August 29, 2019, Defendants filed a Petition for a Writ of Certiorari in the Supreme Court, which sought review of the ET and Comity Decision and which extended the stay of the Second Circuit's mandate until the Supreme Court's final disposition;

WHEREAS, on December 20, 2019, the Trustee filed unopposed petitions for permission to appeal pursuant to 28 U.S.C. § 158(d)(2)(A), which respectively sought (i) a direct appeal to the Second Circuit of the Bankruptcy Court's memorandum decision denying the Trustee's motion for leave to file amended complaint in one adversary proceeding, *Picard v. Citibank, N.A.*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019), and (ii) a direct appeal to the Second Circuit of the Bankruptcy Court's memorandum decision granting, in part, the motion to dismiss the Trustee's amended complaint in another adversary proceeding, *Picard v. Legacy Capital Ltd.*, 548 B.R. 13 (Bankr. S.D.N.Y. 2013) (together, the "Appeals");

WHEREAS, on April 23, 2020, the Second Circuit granted the Trustee's petitions for the Appeals, *In re BLMIS LLC*, Case No. 19-4282, ECF No. 29; *In re BLMIS LLC*, Case No 4283, ECF No. 25;

WHEREAS, the Parties expect the Appeals will seek review of, *inter alia*, an order of the United States District Court for the Southern District of New York, *SIPC v. BLMIS*, 516 B.R. 18, 21-24 (S.D.N.Y. 2014), which determined the standard the Trustee must meet in order to

plead a lack of good faith under either 11 U.S.C. § 548(c) or 11 U.S.C. § 550(b) (the “Good Faith Issue”);

WHEREAS, the Parties agree that a resolution of the ET and Comity Issue by the Supreme Court and the Good Faith Issue by the Second Circuit could materially affect, *inter alia*, the scope of the Trustee’s claims in the Action and/or the scope of any discovery in the Action; and

WHEREAS, the Parties further agree that a stay of the Action pending resolution of the ET and Comity Issues by the Supreme Court and the Good Faith Issue by the Second Circuit is in the interest of all parties and would promote judicial economy and prevent potentially duplicative proceedings;

IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, that the Action be stayed until the later of (i) the issuance of a final and non-appealable order fully resolving the ET and Comity Issues and (ii) the issuance of orders from the Second Circuit in both Appeals of the Good Faith Issue. Nothing herein shall be deemed to affect any Party’s rights and defenses, all of which are expressly reserved.

Dated: May 29, 2020
New York, New York

By: /s/ David J. Sheehan
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Torello H. Calvani
Email: tcalvani@bakerlaw.com
Joanna F. Wasick
Email: jwasick@bakerlaw.com

Attorneys for Irving H. Picard.

Dated: **May 29th, 2020**

By: /s/ Ari D. MacKinnon
**CLEARY GOTTlieb STEEN &
HAMILTON LLP**
One Liberty Plaza
New York, New York 10006
Telephone: (212) 225-2000
Facsimile: (212) 225-3999
Breon S. Peace
Email: bpeace@cgsh.com
Ari D. MacKinnon
Email: amackinnon@cgsh.com
Thomas Kessler
Email: tkessler@cgsh.com

Attorneys for Defendants.

SO ORDERED.

/s/ STUART M. BERNSTEIN
HON. STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE